

**SUMTER COUNTY BOARD OF COMMISSIONERS
EXECUTIVE SUMMARY**

SUBJECT: Manufacturing Jobs Tax Credit Contract - Memco, Inc.

REQUESTED ACTION: Approve as stated above

☐ Work Session (Report Only)

DATE OF MEETING: 6/26/2012

☒ Regular Meeting

☐ Special Meeting

CONTRACT: ☐ N/A

Vendor/Entity: Memco, Inc.

Effective Date: 6/26/2012

Termination Date: 6/25/2012

Managing Division / Dept:

County Administrator - Economic Development

BUDGET IMPACT: Not to exceed of \$100,000

☒ Annual

FUNDING SOURCE:

General Fund

☐ Capital

EXPENDITURE ACCOUNT:

☐ N/A

HISTORY/FACTS/ISSUES:

Memco, Inc. is looking to relocate to and expand their business in Sumter County. This firm delayed their plans for the relocation but when provided with the updated manufacturing jobs tax credit contract executed the same and communicated that their plans are back in motion.

MANUFACTURING JOBS TAX CREDIT AGREEMENT
INCENTIVE BETWEEN SUMTER COUNTY, FLORIDA
AND MEMCO, INC.

THIS MANUFACTURING JOBS TAX CREDIT INCENTIVE AGREEMENT (the “Agreement”) is entered into this 26th day of June, 2012, by and between Sumter County, a political subdivision of the State of Florida, acting by and through its Board of County Commissioners, the governing body thereof, hereinafter referred to as the “COUNTY”, whose principal address is 7375 Powell Road, Wildwood, Florida 34785, and Memco, Inc., hereinafter referred to as the “COMPANY”, whose principal business address is: 901 12th Street, Second Floor, Clermont, Florida 34711, and in furtherance of same the parties to this Agreement hereby state the following:

W I T N E S S E T H:

WHEREAS, COUNTY previously authorized the creation of a Manufacturing Jobs Tax Credit (“MJTC”) incentive program for certain qualified manufacturing businesses expanding or locating within Sumter County, Florida; and

WHEREAS, COUNTY has determined that businesses eligible for the MJTC incentive program are those new or existing manufacturing businesses which meet the criteria and are listed in the latest edition of the North American Industrial Classification System (“NAICS”).

WHEREAS, in 2010, the Average Annual Wage (“AAW”) paid to workers for all industries in Sumter County was \$29,428.00 as published by Enterprise Florida Inc. and compiled by the State of Florida, Agency for Workforce Innovation, Labor Market Statistics; and

WHEREAS, COUNTY is desirous of attracting economic investment to the Sumter County, Florida in order to contribute to the economic growth, provide gainful prosperity, public health, and general welfare of the people of Sumter County, Florida; and

WHEREAS, COUNTY has determined that offering grant funding to eligible industry encourages either existing businesses to expand their operations or new industries to establish themselves and/or relocate in Sumter County, Florida, thereby creating increased tax revenue and new job opportunities for the citizens of Sumter County, Florida; and

WHEREAS, COMPANY is a business seeking to initiate its operations within Sumter County, Florida; and

WHEREAS, COMPANY proposes to locate and expand its workforce within COUNTY in an effort to create additional full-time employment opportunities at a certain average salary level and make certain capital investments within COUNTY, all in accordance with the COUNTY's Land Development Code, Comprehensive Plan, and the Sumter County MJTC incentive program; and

WHEREAS, COMPANY has been duly certified as a target business by Sumter County; wherefore, COUNTY has determined that COMPANY shall meet the eligibility for the MJTC as set forth herein; and

WHEREAS, COUNTY has determined that in order to enhance and preserve the health, education, and welfare of the citizens of the COUNTY, it is necessary, proper, and desirable to enter into this Agreement with the COMPANY in order to enhance the economic development of Sumter County; and

WHEREAS, the COUNTY finds and declares that it is in the public's best interest and serves a legitimate public purpose to award economic incentives to COMPANY pursuant to the terms of this Agreement.

NOW, THEREFORE, in consideration of the mutual covenants, promises and representations contained herein, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto agree that the COMPANY is entitled to certain economic incentives as set forth below based upon the following terms and conditions:

1. The above WHEREAS clauses are incorporated into this Agreement, *in haec verba*.

2. COMPANY is duly organized and validly existing under the laws of the State of Florida and is authorized to do business, and is doing business in the State of Florida; furthermore, COMPANY'S NAICS industry designation is 237120/234910 (Storage tank, natural gas or oil, tank farm or field, construction).

3. COMPANY has the corporate power, authority, and legal right to execute, deliver, and perform this Agreement. The execution, delivery, and performance of this Agreement by COMPANY is duly authorized by any and all necessary corporate and shareholder action.

4. COMPANY shall locate its workforce within COUNTY as more specifically set forth below.

5. In order to be eligible for MITC funding, in addition to the other conditions contained within this Agreement, COMPANY acknowledges and agrees that it is obligated to make a minimum capital improvement of \$500,000.00 to real property,

which can include the acquisition of real property, located within Sumter County, Florida within twelve (12) months of the date of the execution of this Agreement..

6. COMPANY currently has zero (0) employees located within Sumter County (which number shall be considered COMPANY's base number of employees for purposes of this Agreement). The COMPANY agrees to create at least ten (10) new full-time jobs within COUNTY over and above its base number of employees within twelve (12) months of the date of this Agreement in order to be eligible for MJTC funds.

7. The average annual income for all jobs created pursuant to paragraph eight (8), which COMPANY requests for consideration under the MJTC incentive program shall be at least ninety percent (90%) of COUNTY's AAW at the time of employment.

8. Based upon COMPANY's representation that it will create a minimum of ten (10) full-time jobs over and above its base number of employees, together with the other conditions of this Agreement, COUNTY has authorized incentives for COMPANY, based on the AAW of Sumter County, Florida for each job created as follows:

[a.] \$2,000.00 per year, per new, full-time job created if salary is equal to or greater than at least 90% of Sumter County, Florida's published AAW at the time of employment.

[b.] \$3,000.00 per year, per new, full-time job created if salary is equal to or greater than at least 115% of Sumter County, Florida's published AAW at the time of employment.

[c.] \$4,000.00 per year, per new, full-time job created if salary is equal to or greater than at least 150% of Sumter County, Florida's published AAW at the time of employment.

9. In order to maintain eligibility for the MJTC incentive program, all new positions contemplated by this Agreement must be staffed for a period of one (1) year, as verified by copies of Florida quarterly UTC-6 forms and Internal Revenue Service W-2 forms. COUNTY acknowledges that certain turn over in these positions may occur during the term of the Agreement. Should a position remain vacant for less than three (3) months or a position be replaced with an equal or greater paying position, COMPANY will remain eligible for MJTC incentive program funding. COMPANY must reapply for the MJTC incentive funding each successive year, for each new full time job maintained, up to a maximum of three (3) years.

10. Should the COMPANY not maintain the number of jobs or wages it has projected, COUNTY may adjust the incentive for subsequent years in its sole discretion, to reflect what jobs COMPANY has actually created, up to the original incentive amount granted.

11. COUNTY shall remit MJTC funds to COMPANY at the end of each contract year for each employee it deems to be eligible for the MJTC incentive program in its sole and absolute discretion, pursuant to the criteria detailed in paragraph eight (8) above and shall not exceed one hundred thousand dollars (\$100,000.00).

12. The MJTC incentive funds described herein will be distributed or paid as required by this Agreement by COUNTY to COMPANY within thirty (30) days of the appropriation of said funding in COUNTY's budget. It is acknowledged and agreed by the parties that COUNTY'S obligation to provide MJTC incentive funding shall be limited and/or conditioned upon the availability and appropriation of said funds based upon the approval of same in COUNTY's budget.

13. COMPANY shall maintain its place of business in Sumter County as well as all personnel records and other documents pertaining to the relocation and/or creation of a minimum number of permanent new jobs and the retention of such jobs forming the basis of this Agreement. Such records shall be and remain available at the COMPANY'S place of business at all reasonable times during the term of this Agreement and for five (5) years after the termination of this Agreement.

14. COMPANY agrees that COUNTY, or its duly authorized representative shall, until the expiration of five (5) years after termination of this Agreement, have access to examine any of the COMPANY'S documents referred to in Paragraph thirteen (13) above.

15. The COMPANY, in performing its obligations under this Agreement, hereby warrants and represents that it will exert its best effort to provide maximum performance and services consistent with the spirit and intent of the Sumter County MJTC incentive program.

16. This Agreement shall become effective upon execution by the COUNTY and the COMPANY and shall remain in effect for a period of five (5) years. The COMPANY shall provide the COUNTY with annual verifications regarding the number of created jobs and the wages paid to those employees while working within COUNTY. The documentation shall be in a format approved by COUNTY and shall include copies of Florida quarterly UTC-6 forms and Internal Revenue Service W-2 forms to be made on a calendar year basis and to be submitted to Bradley Arnold, Sumter County Administrator, at the Sumter County Government Center, 7375 Powell Road, Wildwood, Florida 34785, no later than February 15th of each calendar year.

17. The County Administrator may extend the period for COMPANY's compliance with the terms of this Agreement by up to one (1) year for good cause shown. If an extension is granted, it shall be documented in writing, and all timeframes in the Agreement shall be extended for the same period of time.

18. This Agreement shall not be assigned by either party without the prior written approval of the non-assigning party. This Agreement shall be binding upon and inure to the benefit of the parties hereto.

19. Whenever either party desires to give notice unto the other, written notice shall be sent via hand delivery, first class mail or overnight carrier to:

COUNTY

Bradley Arnold
County Administrator
The Villages Sumter County Service Center
7325 Powell Road
Wildwood, Florida 34785

COMPANY

Michael Evans, President
MEMCO, INC.
901 12th Street
Second Floor
Clermont, Florida 34711

20. COMPANY agrees that it will not engage in any action that would create a conflict of interest in the performance of its obligations pursuant to this Agreement with COUNTY, or which would violate or cause others to violate the provisions of Part III, Chapter 12, Florida Statutes, relating to ethics in government.

21. COMPANY hereby certifies that no officer, agent, or employee of COUNTY has any material interest as defined in Section 112.312, Florida Statutes, either directly or indirectly, in the business of COMPANY, and that no such person shall have any such interest at any time during the term of this Agreement.

22. COMPANY hereby agrees that monies received from COUNTY pursuant to this Agreement will not be used for the purpose of lobbying the legislature, the judicial branch, or any state or federal agency as defined in Section 216.347, Florida Statutes.

23. This Agreement shall be governed by the laws of Florida and shall be deemed to have been prepared jointly by the COMPANY and the COUNTY, and any uncertainty or ambiguity existing herein, if any, shall not be interpreted against either party, but shall be interpreted according to the application of the rules of interpretation for arm's-length agreements. Venue for any dispute, claim or action arising out of or related to this Agreement shall be in the Circuit Court of the Fifth Judicial Circuit in and for Sumter County, Florida. Each party hereto shall bear their own attorneys' fees and costs in the event of any dispute, claim, action or appeal arising out of or related to this Agreement.

24. COMPANY does hereby covenant and agree to indemnify, defend, and hold the COUNTY, its agents, and employees, harmless from all fines, suits, claims, demands, actions, costs, obligations, attorneys' fees, or liability of any kind arising out of the negligent actions or willful actions of the COMPANY or its agents or employees. COMPANY also agrees to assume all risk in the operation of its business and shall be solely responsible and answerable for any and all accidents or injuries to persons or property arising out of its performance of this Agreement.

25. COMPANY assumes total responsibility for salaries, employment benefits, contractual rights and benefits, contract payments, and federal, state, and local employment taxes, if any, attributable to COMPANY personnel or contractors, and agrees to indemnify and hold the COUNTY harmless from any responsibility for same.

26. In performing this Agreement, any planning, developing, construction, equipping, operating of any project, or carrying out any of the activities to be carried out by the COMPANY, COMPANY acknowledges that it will be acting independently, in the capacity of an independent entity and not as a joint venture, partner, associate, employee, agent or representative of the COUNTY.

27. This Agreement is made for the sole benefit of the parties hereto and their respective successors, including any successor in interest to the COMPANY's interest, and is not intended to and shall not benefit any third party. No third party shall have any rights hereunder or as a result of this Agreement or any right to enforce any provisions of this Agreement.

28. The terms and conditions of this Agreement placed upon the COUNTY are applicable only to the extent they are within and consistent with the constitutional and statutory limitations on the authority of the COUNTY. Specifically, the parties acknowledge that the COUNTY is without authority to grant or pledge a security interest in any of the COUNTY'S revenue sources or property, and is only obligated to make payments in accordance with this Agreement as funds are available after adoption of the Sumter County budget.

29. Default:

A. For purposes of this Agreement, "event of default" shall mean any of the following:

1. COMPANY misapplies or causes the misapplication of COUNTY funds received pursuant to this Agreement, if applicable.

2. Any representation or warranty made by the COMPANY herein or in any statement, invoice or certificate furnished to the COUNTY in connection with the performance of this Agreement which proves to be untrue in a material respect as of the date of issuance or making thereof to the COUNTY by the COMPANY.

3. COMPANY materially breaches any covenant contained in this Agreement and such breach continues or is not corrected or cured within thirty (30) days after written notice thereof to the COMPANY by the COUNTY; provided however, that the COUNTY may declare a lesser cure period in the event that it finds, in its sole and absolute discretion, that such lesser period is necessary to protect the public health, safety, or welfare.

4. COMPANY fails to provide the COUNTY the written verification, satisfactory to the COUNTY, of its performance obligations herein.

5. COMPANY fails to expend or use funds in accordance with this Agreement, if applicable.

6. COMPANY fails to create and maintain the minimum number of qualifying permanent full-time new jobs in Sumter County within one (1) year after execution of this Agreement and throughout the term of the Agreement.

7. COMPANY closes its business, moves out of Sumter County, or loses its status as a NAICS business at any time during the Agreement period.

B. If within forty-five (45) days after receiving written notice from the COUNTY that an event of default has occurred, the COMPANY shall reimburse the COUNTY all MJTC incentive installments paid plus interest at the statutory rate at the time of default from the date of the disbursement.

30. Time is of the essence of this Agreement.

31. It is declared to be the intent of COUNTY, that if any section, subsection, sentence, clause, or provision of this Agreement is held invalid, the remainder of this Agreement shall be construed as not having contained said section, subsection, sentence, clause, or provision, and shall not be affected by such holding.

32. This Agreement constitutes the entire Agreement of the parties with respect to the subject matter hereof, and may not be modified or amended except by a written instrument equal in dignity herewith and executed by the parties to be bound hereby.

33. COMPANY agrees that no representations have been made by the COUNTY in order to induce the COMPANY to enter into this Agreement other than as expressly stated in this Agreement.

REMAINDER OF PAGE INTENTIONALLY LEFT BLANK

IN WITNESS WHEREOF, the parties hereto have executed this Agreement on
the 26
the 19 day of June, 2012.

~~SEAL~~

~~BOARD OF COUNTY COMMISSIONERS~~
~~OF SUMTER COUNTY, FLORIDA~~

~~ATTEST~~

MEMCO, INC.

By:

Michael S. Evans
President

By:

Michael S. Evans

XXXXX

~~XXXXXX~~
~~COMPANY:~~

WITNESSES: FOR MEMCO

~~BY~~

[Signature]
Signature of Witness

BOARD OF COUNTY COMMISSIONERS
SUMTER COUNTY, FLORIDA

Tyler Shafer
Print Name of Witness

BY:

Garry Breedon, Chairman

Kristina Hill
Signature of Witness

ATTEST: GLORIA R. HAYWARD, CLERK OF COURTS

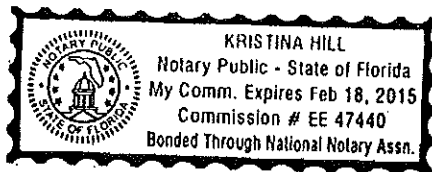
BY:

Connie Webb, Deputy Clerk

Kristina Hill
Print Name of Witness

STATE OF FLORIDA
COUNTY OF SUMTER

The forgoing instrument was acknowledged before me this 19th day of
June, 2012, by Michael S. Evans of
Memco, Inc, a Florida corporation, in his/her capacity as
president on behalf of the corporation. He is personally known to me, or
has produced Florida Driver License as identification.



Kristina Hill
Notary Public

KRISTINA HILL
Printed Name of Notary Public
My Commission Expires: 02/18/15